ALAN WILSON
ATTORNEY GENERAL

February 24, 2012

The Honorable John M. Knotts, Jr.
Senator, District No. 23
P.O. Box 142
Columbia, SC 29202

Dear Senator Knotts:

We received your letter requesting an opinion of this office regarding the Richland-Lexington Airport District (the "Airport District"). You ask us whether or not the City of Cayce is obligated to provide the same water and sewer rates to the Airport District as it charges to resident customers. By way of background, you state the following:

> [s]everal years ago, a bill was passed to allow roads around a special purpose district to be used as contiguous purposes for annexation. This was done at that time in order for the City of Cayce to be able to annex an area [*i.e.*, Three Fountains] adjacent to the City of Cayce on the other side of the [Airport District]. The airport lies in apposition that the following municipalities are blocked from annexation due to location of the [Airport District]. The municipalities are City of West Columbia, City of Cayce, Town of Springdale, and Town of South Congaree.
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> However, the City of Cayce refused to allow in-city rates to [the Airport District] inside the roadway boundaries. The [Airport District] is a special purpose district set up years ago as an entity of the County of Lexington, County of Richland, and City of Columbia with appointed commissioners representing each entity. The airport has no registered voters living in its special purpose district. Plus, being owned by three other governments cannot annex into the City of Cayce.

Law/Analysis

Your request raises several important issues. Specifically, S.C. Code Ann. §5-7-60 provides general authority for municipalities to provide services outside their corporate limits. This provision states:

> [a]ny municipality may perform any of its functions, furnish any of its services, except services of police officers, and make charges therefor and may participate in the financing thereof in areas outside the corporate limits of such municipality by contract with any individual, corporation, state or political subdivision or agency thereof or with the United States Government or any agency thereof, subject always to the general law and Constitution of this State regarding such matters, except within a designated service area for all such services of another municipality or political subdivision, including water and sewer authorities, and in the case of electric service, except within a service area assigned by the Public Service Commission pursuant to Article 5 of Chapter 27 of Title 58 or areas in which the South Carolina Public Service Authority may provide electric service pursuant to statute. For the purposes of this section designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof. Provided, however, the limitation as to service areas of other municipalities or political subdivisions shall not apply when permission for such municipal operations is approved by the governing body of the other municipality or political subdivision concerned.

Based on our research, we have previously advised that fees charged to nonresidents are governed by contract, as opposed to statute. See Op. S.C. Atty. Gen., September 27, 2011. Section 5-31-1910 specifically addresses a municipality's ability to furnish water outside of its municipal boundaries. This provision states:

> [a]ny city or town in this State owning a water or light plant may, through the proper officials of such city or town, enter into a contract with any person without the corporate limits of such city or town but contiguous thereto to furnish such person electric current or water from such water or light plant of such city or town and may furnish such water or light upon such terms, rates and charges as may be fixed by the contract or agreement between the parties in this behalf, either for lighting or for manufacturing purposes, when in the judgment of the city or town council it is for the best interest of the municipality so to do. No such contract shall be for a longer period than two years but any such contract may be renewed from time to time for a like period.

Thus, a municipality may provide water service outside of its corporate limits but contiguous thereto.[1]

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[1]There are other mechanisms by which a municipality may furnish its water and/or sewer service to property beyond its corporate boundaries. For example, §§5-31-1920 and -1930 change the time limit and eliminate the contiguity requirement of §5-31-1910, but these provisions apply only to cities of a certain minimum population. On the other hand, §5-31-1520 permits a city to extend its water and sewer systems to any property beyond the corporate limits, and it states neither a time limit nor a threshold population. In an opinion dated September 27, 2011, we noted that ". . . a municipality may choose freely among the available mechanisms for extending its water or sewer system, provided the municipality complies with the specific requirements of the chosen mechanism and with the general requirements found in section 5-7-60 of the South Carolina Code."

Further, in an opinion dated July 17, 1989, we addressed whether the City of Columbia could charge different rates to nonresidents for municipal services. We noted the authority given to municipalities in §§5-7-60 and 5-31-1910, and cited to an opinion of this office dated February 5, 1976, construing §5-31-1910, that stated a "nonresident purchaser of water from a municipality would have only those rights set forth or necessarily implied from the contract to sell and furnish water, and further that the non-resident has no rights beyond those in the contract." In addition, we reviewed the statutory authority allowing municipalities to provide services to nonresidents. We thus stated:

> . . . the establishment of higher rates or charges for the provision of water or sewer services to nonresident customers is not covered by statute but is instead a matter of contract. This Office has advised previously that a municipality has considerable discretion in entering into contracts to provide its services to persons residing outside municipal boundaries. [Op. S.C. Atty. Gen., December 22, 1986]. As noted therein, the use of the term "may" in Section 5-7-60 "indicates that extra-territorial provision of services by a municipality, by contract with an individual, is within the discretion of the municipality." The setting of rates thus appears to be within the discretion of the municipality, as well; we have identified no authority which requires city residents and nonresidents to be charged the same rates. See also [Op. S.C. Atty. Gen., February 5, 1976].

Subsequent to our 1989 opinion, the South Carolina Supreme Court issued an opinion as to whether the City of Conway had a duty to charge nonresidents a reasonable fee for water service. Sloan v. City of Conway, 347 S.C. 324, 555 S.E.2d 684 (2001). According to the facts of the case, the City of Conway passed an ordinance raising rates for nonresident customers for a reason unrelated to the service provided to the nonresidents. A nonresident alleged a charge of four times that charged residents was excessive and exorbitant. Id., 555 S.E.2d at 685. The Court concluded as follows:

> [o]ur decision in Childs v. City of Columbia, 87 S.C. 566, 70 S.E. 296 (1911), is dispositive here. In Childs, we held a municipality has "no public duty to furnish water to [a nonresident] at reasonable rates or to furnish it at all." 70 S.E. at 298. Any right a nonresident has arises only by contract. Further, a city actually has "an obligation to sell its surplus water for the sole benefit of the city at the highest price obtainable." Id. (emphasis added). We concluded the nonresident plaintiff had no basis to challenge the out-of-city rate which, in that case, was four times the in-city rate. See also Calcaterra v. City of Columbia, 315 S.C. 196, 432 S.E.2d 498 (Ct. App. 1993) (following Childs and holding higher rates for out-of-city water customers cannot be challenged under the S.C. Unfair Trade Practices Act).

City of Conway, 555 S.E.2d at 686.

Based upon Childs, the Court determined that, "[a]bsent a specific legislative directive, there is no reasonable rate requirement for water service to nonresidents ... Further, under Childs, [the City of Conway's] duty to appellants arises only from contract." City of Conway, 555 S.E.2d at 687. Thus, the Court concluded that, "[b]ecause City has no duty to charge reasonable rates other than by agreement, and

its rates comply with this agreement, summary judgment was properly granted." Id. The South Carolina Court of Appeals came to a similar conclusion in Calcaterra. That Court considered whether the City of Columbia could charge higher water rates to nonresidents. The Court stated:

> [t]he Supreme Court has held that the municipal governing body in setting rates for services outside the corporate limits is to be guided by the best interests of the municipality and has an obligation to sell surplus water for the highest price obtainable.

Id., 432 S.E.2d at 499 [citing Childs].

Because the terms offered to nonresidents are a matter of contract, so long as the nonresident authority agrees to the terms offered by the municipality, a court is not likely to question the agreement. We have previously advised that there is no requirement that municipalities provide service to nonresidents on reasonable terms. Op. S.C. Atty. Gen., June 16, 2011; see also Op. S.C. Atty. Gen., February 5, 1976 ["A nonresident purchaser of water from a municipality has only those rights set forth or necessarily implied from the contract to sell and furnish water and the nonresident has no rights beyond the contract"]. In other words, a municipality may profit from providing water to nonresidents. Id. [citing Sossamon v. Greater Gaffney Metropolitan Utilities Area, 236 S.C. 173, 113 S.E.2d 534 (1960)]; see Op. S.C. Atty. Gen., June 30, 2006.

Additionally, your letter questions whether or not the City of Cayce may annex the Airport District, therefore allowing for in-city water rates. Initially, we note that the Airport District is a special purpose district created by §§55-11-310 *et seq.* The Airport District is constituted a political subdivision of the State and a body politic and corporate. Id.; see Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975) [discussing the creation of the Airport District]. In addition, §55-11-320 provides for the creation of the Richland-Lexington Airport Commission (the "Commission") to perform the corporate powers and duties of the Airport District, and establishes the composition and method of appointment of Commission members.[2] Section §55-11-340 sets forth the authority of the Commission, including the power to ". . . transfer and dispose of any property, real or personal, or any interest in it. . ."

Chapter 3 of Title 5 of the South Carolina Code governs a municipality's power to extend its corporate limits. This chapter provides numerous ways in which annexation may be accomplished by a municipality. The method most likely to apply to the Airport District is provided in §5-3-150(3), which allows all real property owners of land contiguous to a city to petition the city for annexation of their property. Upon information and belief, the property contained in the Airport District is entirely owned by the Airport District. Once there is acceptance of the petition by ordinance of the city council, annexation is complete.

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[2]The Commission is composed of twelve members appointed by the Governor as follows: "five members must be appointed upon the recommendation of a majority of the Lexington County Legislative Delegation, five members must be appointed upon the recommendation of a majority of the Richland County Legislative Delegation, and two members must be appointed upon the recommendation of the City Council of the City of Columbia. . . ."

Significantly, we must also consider §5-3-15, which specifically addresses annexation as it pertains to the Airport District.[3] This provision states:

> [n]o municipality may annex, under the provisions of this chapter, any real property owned by an airport district composed of more than one county without prior written approval of the governing body of the district.

Under the above authority, we advise that the Airport District may petition the City of Cayce for annexation.[4] In addition, because the Airport District is composed of property partially in Richland County and partially in Lexington County, the Airport District may be annexed only upon the written approval of the Commission.

You suggest that the City of Cayce should be required to give the same water rates to the Airport District as Three Fountains and Cayce residents, because "the roads around the [Airport District] were solely the only way to allow Cayce to annex [Three Fountains]." To the contrary, the Legislature has addressed annexation by a municipality of property contiguous to the Airport District.[5] Specifically, §55-11-355 provides that:

> [n]o property of the Richland-Lexington Airport District is a barrier to the contiguity requirements for the purposes of annexation. Any municipality which is contiguous to property owned by the [D]istrict may annex, as provided by law, any property contiguous to the [D]istrict.

Further in this regard, we would reference §55-11-350, which relates to the authority of Commission with respect to the roads and streets on its properties. This provision authorizes the Commission "to adopt and promulgate rules and regulations governing the use of roads, streets and parking facilities upon the lands of the Richland-Lexington Airport Commission." In addition, §55-11-350 provides that:

> [n]otwithstanding the provisions of this section, any public road, street, or highway located in the Richland-Lexington Airport District which is contiguous to or intersects the corporate limits of a municipality is within the police jurisdiction of that municipality.

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[3]See 1995 S.C. Acts No. 99, §1. We note that §2 of Act 99 also added §55-11-185, providing that "[n]o municipality may annex any real property owned by the [Greenville-Spartanburg Airport District] without prior written approval of the [Greenville-Spartanburg Airport Commission]."

[4]If the Airport District decides to seek annexation by the City of Cayce, the Airport District may wish to seek further clarification as to whether §5-3-310 would apply.

[5]This office has not been supplied any maps, plats, or copies of annexation ordinances which clearly set forth the exact areas annexed by the City of Cayce in relation to the Airport District. For purposes of this opinion, therefore, we assume the property representing Three Fountains that was annexed by the City of Cayce was contiguous to the Airport District.

This statute simply clarifies police jurisdiction over streets and highways where the boundaries between the municipalities and the Airport District could cause some confusion over which police department may exercise its jurisdiction in the area immediately surrounding the boundary line. It does not grant a municipality any other authority in the Airport District.

Conclusion

The City of Cayce may annex the Airport District upon written approval of the Commission, and as provided by law. This in turn would entitle the Airport District to water rates provided to residents in the City of Cayce. Absent annexation, state law specifically allows the City of Cayce to provide water outside of its corporate limits by means of a contract with the nonresidents requesting service. However, current state law does not require the City of Cayce to charge its residents and the Airport District the same water rates, unless otherwise provided for under contract. As we explained above, courts typically do not question the reasonableness of these rates. The reasonableness of the rates is nevertheless subject to judicial review. The Airport District may thus determine to pursue a legal cause of action for a court to determine whether the rates are arbitrary or discriminatory. Many questions of fact would need to be resolved before any definitive conclusion could be reached. This office is, however, not authorized to make such factual determinations in a legal opinion. See Ops. S.C. Atty. Gen., February 21, 2012; February 26, 2001. As we have stated previously, "[u]nlike a fact-finding body such as a . . . court, we do not possess the necessary fact-finding authority and resources required to adequately determine . . . factual questions." Op. S.C. Atty. Gen., February 19, 1999. We further suggest that it might be best for the Airport District to seek a legislative remedy to address your concerns regarding water rates being charged to the Airport District.

If you have any further questions, please advise.

Very truly yours,

N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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